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09/575,480	05/19/2000	Gregory A Kopia	CRD-850USNP	1106

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/575,480
Filing Date: May 19, 2000
Appellant(s): Kopia et al

Paul Coletti
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 1, 2005 appealing from the Office action mailed June 2, 2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

U.S. Patent No. 6,335,029	Kamath	01-2002
U.S. Patent No. 6,159,488	Nagler et al	12-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, 4, and 6 are rejected under 35 U.S.C. 102 (a and/or e) as being anticipated Kamath et al (U.S. Patent No. 6,335,029). Kamath et al discloses a process for the treatment of restenosis via intravascular infusion/delivery by release from a surface of a stent of a combination of at least two agents (column 3 lines 57-67, column 5 lines 5-18 and 54-67, column 6 lines 1-27, and column 7). Further, the at least two agents include an anti-proliferative agent,

as recited in column 5 lines 58-62 and column 6 lines 5-10 which inhibit smooth muscle cell growth. The anti-proliferative is rapamycin or an analogue, as reicted in column 6 lines 20-25 where TAXOL is considered the analogue-consistent with claims 5 and 7 of the current application. Further, Kamath et al discloses at least two agents that include an antiflammatory, as recited in column 5 lines 55-58 and column 6, lines 5-11 that will inhibit smooth muscle growth in therapeutic dosage amounts. They are in layers in therapeutic dosages, as recited in column 5, lines 5-20 an column 7, lines 40-45.

Regarding claim 3, Kamath et al disclose that as applied in claim 1, as well as, an antiflammatory agent that is desamethosone and an anti-proliferative that is taxol, as recited in claim 5, line 58 and column 6, lines 13-27.

Regarding claim 4, Kamath et al as modifed disclose that as applied to claim 1, as well as, a combination of at least two agents that include a growth factor, as recited in column 5, lines 63-67.

Regarding claim 6, Kamath et al disclose that as applied to claim 1, as well as, a combination of at least two elements that include a tyrosine kinase inhibitor, as recited in column 5, lines 60-64.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 8 & 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kamath et al (U.S. Patent No. 6,335,029), as applied above, and further in view of Nagler et al (U.S. Patent No. 6,159,488). Kamath et al disclose the invention as applied to claim 1. However, Kamath et al do not explicitly recite halofuginone as an inhibitor of extracellular matrix. On the other hand, Nagler et al teach a stent coated with halofuginone, as recited in columns 9 & 10. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the system of Kamath et al to include halafuginone for the purpose of inhibiting SMC proliferation.

(10) Response to Argument

Regarding the term "analogue" recited in claim 1, since this term was not originally filed and was not originally supported by applicant's specification, the Examiner is directed to the a dictionary for its meaning. As stated in the Advisory Action, the term "analogue" is defined as a structure is similar in function to one in another according to the American Heritage Dictionary. Applicant discloses on page 8 lines 25-30 indicating TAXOL as an anti-proliferative agent along with rapamycin. In claim 9, applicant claims TAXOL as one of anti-proliferative agent taken from a Markush Group.

For these citings above along with a guidance from the dictionary, it is believed that TAXOL is analogue of rapamycin.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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